

Application No. : 10/655,532
Amdt. Dated : November 12, 2004
Reply To O.A. Of : August 11, 2004

REMARKS

Claims 1–47 were pending in this application. In the present amendment, the Applicants canceled Claims 1–41 without prejudice or disclaimer, and added new Claims 48–73. Accordingly, Claims 42–73 remain pending for consideration.

Rejection Of Claims 1–3, 7–11, 13, 15, 19–23, 25–29, 33–37, 39–47 Under 35 U.S.C. § 102(e)

The Office Action rejected several claims under 35 U.S.C. § 102 as being anticipated by U.S. Patent Publication No. 2003/0060877 by Falotico et al. (the Falotico reference). The Applicants respectfully traverse the foregoing rejections in light of the amendments to the claims because the Falotico reference fails to identically teach every element of the claims. See M.P.E.P. § 2131 (stating that in order to anticipate a claim, a prior art reference must identically teach every element of the claim).

For example, independent Claim 42 recites a stent comprising:

a stent structure configured to carry a plurality of therapeutic agents;
at least a first therapeutic agent;
at least a second therapeutic agent; and
at least a third therapeutic agent,
wherein said first therapeutic agent is an anti-inflammatory, and wherein
said second therapeutic agent and said third therapeutic agent are alternately
provided repeatedly.

Moreover, independent Claim 47 recites a method for treating a stenosed body lumen comprising:

delivering a stent to the body lumen; and
delivering at least three therapeutic agents to the patient via said stent,
wherein said at least three therapeutic agents are administered separately, and
wherein at least two therapeutic agents are alternately provided repeatedly.

In contrast, the Falotico reference discloses a stent that has “a coating having a two tier release profile [that] may be utilized to treat both the acute and chronic phases of vulnerable plaque.” Para. [0200]. The reference discloses a base layer having a “slow release lipid lowering or lipid modifying drug, agent and/or compound in therapeutic dosages.” Para. [0203]. A third layer is provided containing agents and/or compounds for treating the inflammatory process. See para. [0203]. Between the base layer and the third layer is a polymer layer to control the release rate of the lipid lowering agent of the

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base layer, and above the third layer is a polymer layer to control the release rate of the therapeutic agents for treating the inflammatory process. See paras. [0203–0204]. However, the reference does not identically disclose a stent or method incorporating all the elements in the pending claims. For example, the Falotico reference does not teach, among other things, alternately and/or repeatedly providing agents on the stent. Therefore, the Applicants respectfully submit that the foregoing rejections based on anticipation by the Falotico reference should not be applied to the above-listed exemplary claims. The Applicants respectfully submit that independent Claims 43, 44, and 70 also include elements that are not disclosed by the Falotico reference.

Additionally, Claims 45, 46, 48–69, and 71–73, which depend from Claims 42–44, and 70, are believed to be patentable for the same reasons articulated above with respect to Claims 42–44, and 70, and because of the additional features recited therein.

Rejections Under 35 U.S.C. § 103(a) Based On Falotico and Wnendt

The Office Action rejected various claims under 35 U.S.C. § 103 as being unpatentable over Falotico in view of U.S. Patent Publication No. 2004/0117008 by Wnendt et al. (the Wnendt reference). As discussed in the foregoing, the Falotico reference fails to teach, among other things, alternately and/or repeatedly providing a therapeutic agent on a stent. The Applicants submit that even if the Wnendt reference could be combined with the Falotico reference, the Wnendt reference also fails to teach or suggest alternately and/or repeatedly providing agents on the stent. Therefore, the Applicants respectfully submit that the combination of these references fails to teach or suggest the elements of the pending claims. See M.P.E.P. § 2143 (stating that in order to establish a *prima facie* case of obviousness for a claim, the prior art references must teach or suggest all the claim limitations).

Rejections Under 35 U.S.C. § 103(a) Based On Falotico and Palasis

The Office Action rejected various claims under 35 U.S.C. § 103 as being unpatentable over Falotico in view of U.S. Patent No. 6,369,039, issued to Palasis et al. (the Palasis patent). As discussed in the foregoing, the Falotico reference fails to teach, among other things, alternately and/or repeatedly providing a therapeutic agent on a

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stent. The Applicants submit that even if the Palasis patent could be combined with the Falotico reference, the Palasis patent also fails to teach alternately and/or repeatedly providing a therapeutic agent on a stent. Therefore, the Applicants respectfully submit that the combination of these references fails to teach or suggest the elements of the pending claims.

New Claims 48–73 are Patentable

New Claims 48–73 have been added through this amendment. Claims 48–69 depend from Claim 42, and Applicants respectfully submit they are patentable for the same reasons articulated above with respect to Claims 42–44, and because of the additional features recited therein. New independent Claim 70 and new dependent claims 71–73 also include elements that Applicants respectfully submit are not taught or suggested in the art of record.

Request For Telephone Interview

In view of the forgoing, the present application is believed to be in condition for allowance, and such allowance is respectfully requested. If further issues remain to be resolved, the Applicants' attorney of record, Stephen C. Jensen, hereby formally requests a telephone interview with the Examiner. The Applicants' attorney can be reached at (949) 760-0404.

Respectfully submitted,

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